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Improving North Dakota Bar Assoc HSSION Requirements

LAURIZ VOLD

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Improving North Dakota Bar Admission Requirements

LAURIZ VOLD

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Improving North Dakota Bar Admission Requirements

LAURIZ VOLD,
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A. PRELIMINARY SKETCH

The present law in North Dakota requires no general educational foundation for admission to the bar but requires three years of study of law, either in law school or office.[1]

The past generation has witnest a steadily progressing movement for improving the standards of legal education for admission to the bar.[2] This movement culminated in the resolutions of the Amercian Bar Association adopted at its annual meeting in 1921[3] wherein the call is made for two years of collegiate preparation and three years of full time work in a first class law school as a minimum educational qualification for admission to the bar, with a provision for correspondingly more time if part time preparation is offered.

The American Bar Association also provided for the classification of law schools by its Council on Legal Education, with the avowed purpose of publishing annually for the benefit of intending law students what schools of law are worth attending. It was thought that if the schools maintaining standards set by the American Bar Association were thus made known students would be likely to resort to the better schools thus recommended by the American Bar Association and other schools would be likely either to come up

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[1] Sec. 790 (Compiled Laws, 1913,) QUALIFICATION OF APPLICANTS. Applicants for admission to practise as attorneys and counselors at law must be residents of this state, at least twenty-one years of age, of good moral character, and must have actually and in good faith pursued a regular course of study of the law for at least three full years, either in the office of a member of the bar of this state residing therein, and in regular practise or with and under the immediate direction of a judge of the Supreme Court, district court, or county court having increast jurisdiction, of this state, or in some reputable law school of the United States, or partly in such office and partly in such law school; but in computing such period of study, the school year of any such law school, consisting of not less than thirty-five weeks, exclusive of vacation, shall be considered equivalent to one full year.

[2] Mr. Alfred Z. Reed of the Carnegie Foundation, in an article entitled "Raising Standards of Legal Education," appearing in the November, 1921, number of the American Bar Association Journal (Vol. VII. pp 570-578) reviews this movement in detail and gives fifty references to data upon it from Reports of the American Bar Association, and other sources. Extended historical information covering the whole of the last century's development of legal education may be found in Bulletin No. 15 of the Carnegie Foundation compiled by the same author.

[3] Reports of the American Bar Association (1921) pp. 37-47.

to the standards required by the American Bar Association or would for lack of attendance close their doors. The work of classifying law schools in accordance with the American Bar Association standards is now going on.

The American Bar Association also recommended that the proper authorities in the different states should provide for rules for admission to the bar complying with these standards.

The Conference of Bar Association Delegates representing most of the state bar associations thruout the country and many of the county and city bar associations met in February, 1922, in Washington, D. C., and after elaborate discussion indorst the action of the American Bar Association.[4]

The North Dakota State Bar Association at its annual meeting in September, 1922, indorst the American Bar Association standards and recommended a draft statute to carry them into effect in North Dakota. The State Bar Board, also, may be cited as standing for the American Bar Association standards. While that Board has not yet (September, 1922,) taken any official action on the subject its membership has in conference with the present writer exprest unanimous approval of those standards for application in North Dakota.

With the American Bar Association, the Conference of delegates from the state and local bar associations, the North Dakota State Bar Association, and the State Bar Board, all committed to this program of improving the training for admission to the bar it only remains for the North Dakota Legislature to do its part in carrying out the proposed program. The action of the Council on Legal Education in classifying law schools and publishing its list of approved law schools for the information of intending law students will undoubtedly in large measure affect the choice of schools of law for the future. That work is now under way and will go on irrespective of local action. To make the work complete, however, the state ought to require that candidates for admission to the bar satisfy the requirements of two years of college and three years of full time law work and correspondingly more if it is only part time work as a minimum of preparation. It is therefore appropriate that in North Dakota the legislature should pass the appropriate statute to carry into effect as the legal rule of the state the standards for admission to the bar set up by the American Bar Association and approved by the Conference of Bar Association Delegates

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[4] See Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, p. 174.

from all parts of the country, and by the North Dakota State Bar Association.

It is the purpose of this paper not to argue at length the general merits of improving standards for admission to the bar but to point out the principal reasons in favor of the movement, to analyze the principal objections to it, and in reference to the various arguments to point out some local considerations applicable to the discussion. The general arguments for the proposition have been put so frequently in their various phases for the last generation that summary statements from the leading men of the country on the general features are deemed sufficient. The local aspects of the various arguments and especially the local aspects of the various objections are treated in more detail as particularly applicable to North Dakota.

B. NEED OF BETTER TRAINING FOR THE BAR

1. General Arguments

The case for better training for the bar is put by Elihu Root in the following terse language:[5]

> ".... That there is trouble I think every one of us feels. It may not be trouble in this particular county, in this particular Bar, in this or that state; but it is trouble in so large a part of the Bar that it affects the whole Bar. You cannot have too many rotten spots in an apple and have the rest of it good. We have for years been hearing just such things as Judge Goodwin tells us out of his experience on the Bench, about the sacrifice of client's interests, increast expense, the continual delays, the sending back of cases for new trial, notwithstanding their merits, owing to the inefficiency of members of the Bar. Those reports have been coming from all over and they have blackened the name of the Bar. They have led the public to observing the manifold defects of our administration of justice—its delays, its technicalities, its repeated and oft-repeated appeals and reviews, its long delays which prevent the honest man of modest means from getting his rights, while the rich man, with abundant income, and the sharper, with subtle and adroit ingenuities, can put off indefinitely the granting of justice. That is the charge against us, against you and me; and what is worse still, it is a charge against our free institutions that is sapping

[5] Ibid. pp. 17-18.

the faith, the confidence, the loyalty of the millions of people in this land, in those institutions.

"Apart from those evidences, there is enough in the general conditions to satisfy any one that either the Bar or somebody else is not quite doing its full duty. Vastly complicated our practise has become. Twelve thousand to fifteen thousand public decisions of courts of last resort in a year! Twelve thousand to fifteen thousand more statutes from our Congress and legislatures! A wilderness of laws and a wilderness of adjudications that no man can follow, requiring not less, but more, ability; not less, but more, learning; not less, but more, intellectual training in order to advise an honest man as to what his rights are and in order to get his rights for him. Are we doing it? No. The Bar stays still. It has been talking 25 years. The American Bar Association has been talking about it for 25 years, appointing committees, listening to reports and filing them. This is the first attempt, in any authoritative and conclusive way, to do something. I am here to ask you to help in it."

Ex-President Taft, Chief Justice of the Supreme Court of the United States, puts the case this way:[6]

"....The source of the law is in statutes and in precedents. The statutes are without number and the precedents are myriad and are contained in thousands, yea tens of thousands of volumes. No man can know all the statutes or all the cases which make precendents in the unwritten law, and in the application of statutes. He can only study generally the principles as they are to be found in the leading cases and familiarize himself with the methods available for finding the detailed precedents especially applicable to the case in hand.

"This calls for a good and a trained memory, great intellectual industry and facility, a power of analytical and synthetic reasoning, and very wide, general information of society and the practical affairs of men and government, adapting him to quick acquisition of knowledge, accurate and sufficiently detailed to enable him to advise those who seek his assistance, and to maintain or defend their rights in every walk, profession or business in our kaleidoscopic society.

"It goes without saying that the best preparation for the successful study and practise of such a profession is a wide and

[6] Ibid. pp. 26-27.

thoro general education. The best general education is to be had at our colleges and universities. There one studies literature, language, mathematics, science, history, economics and government. There one is subject to daily, monthly, semi-yearly or yearly examinations of what he has studied. He is trained to arrange his mental machinery by special review and rapid summary of the study of a considerable period, to present it to his examiner in a comprehensive, accurate and logically digested form. He will not remember it all permanently but he will carry enough largely to widen his general information, and what is more important, he will by this constant practise in preparing for such a review and examination acquire a facility in the rapid acquisition and analytical digestion of any of the infinite variety of subjects he may have to be familiar with in advising a client or conducting a litigation for his rights. Such facility will often make the difference between his failure and his success. For no learned profession, therefore, is a thoro and general college education more necessary than for that of the law.

"....We should not be governed in laying down such rules by the needs or ambitions of those who would become lawyers. The safety of society, and their useful aid to society are the prime considerations. If a man cannot secure the preparation which an average man should have, to be a lawyer, then he should seek some other avenue of livelihood. We have all the lawyers we need now, and there is likely to be no dearth of them, however thoro the preparation insisted upon. The illustrations of the evil that may be done, by admitting to a learned profession of importance to the community one not properly prepared, are perhaps easier to find and elaborate in the case of physicians and surgeons than in that of the lawyers; but the evil tho not as plain is just as great in the injury done to individuals and society."

II. College Education

When the subject is further analyzed it readily appears that the argument may be separated into the need of college education and the need of adequate law school preparation.

1. Legal Efficiency

The need for at least two years of college education in view of the technical education necessary to make an efficient layer is

supported both by considerations applicable generally and by local information.

a. *General Considerations*

The general considerations are exprest by Professor Williston in the following extracts:[7]

> ".... If years alone were requisite, this desideratum could be obtained by fixing an age limit for students entering upon legal studies; but years alone will not suffice, the years must have been spent in such a way as to fit the young man for the work which is before him. Law is a bookish profession, and it is inevitable that it should become more so. Illustrations of great lawyers of past generations who have achieved success with slender knowledge derived from books are misleading. The printed sources of Anglo-American law have been more than doubled in bulk in 30 or 40 years. There are more law reports in English printed since 1885 than were printed prior to that year from the beginning of English law reporting. The bulk of statute, moreover, is enormous. No lawyer can be efficient now who has not some ability to use books and extract from them quickly and accurately the principles which they state. The law student at the very beginning of his course, and thruout his course, must be plunged in the midst of books. It is not an adequate or sufficient technical education for him to learn brief summaries of the main topics of the law. He must be able to investigate the original sources and learn to do this easily and quickly. Only by previous considerable use of books is he likely to have facility in using them, and in extracting quickly from language frequently containing large words and involved sentences an accurate conception of their meaning.....
>
> ".... More important even than these special studies is the capacity to use the English language, to read it understandingly, to write it and speak it correctly and effectively. While it must be sadly admitted that college students are frequently defective in these respects, at least they are better than those who have not had college training."

b. *Local Information*

Local considerations bearing upon the need for at least two years of college preparation in the interest of legal efficiency are

[7] Ibid. pp. 31, 34.

sufficiently striking to be worthy of serious attention. The bar of North Dakota is composed only in part of members trained in North Dakota and admitted as sons of the soil. Besides the domestic sons of North Dakota who are members of the bar there is constantly coming to the bar of North Dakota large numbers whose training has been secured in other states, in other educational institutions with all of the preliminary and collegiate grades of preparation provided by the best equipment the entire country affords. Whether or not North Dakota require of its candidates for admission to the bar the collegiate and law school training set up as a standard by the American Bar Association large numbers of the candidates for admission who come here from outside the state will come equipt with this first class training. This will be so in increasing measure as the classification of law schools according to American Bar Association standards proceeds. If North Dakota does not require such first class training for admission to the bar it will nevertheless have in its incoming members many with this superior preparation. It can readily be seen therefore that those who are called to the bar without such preparation are permitted to begin their practise of law with a great handicap against their probable success in competition with the better trained men who come from other states. Furthermore, it is easy to perceive that the North Dakota clients and the North Dakota public, as the larger factors involved in litigation, are likely to suffer thru the relative incompetence of untrained members of the bar who have secured their license to practise in view of low minimum requirements and who in the practise they succeed in picking up are unable to hold their own against the better trained attorneys who have come from outside the state.

Nor is it necessary to rest on mere personal impressions and personal judgments to determine that the greatest efficiency in the practise of law is shown by the lawyer equipt with a broad collegiate education. In the observations that were some years ago compiled by the present writer from official files and court records bearing upon the success in practise of North Dakota lawyers it appeared beyond question that the college graduate lawyers had on the average far exceeded the success of their less well-equipt competitors. As more elaborately set out in another place,[8] the range of success appearing in the actual achievements of North Dakota lawyers shows college graduates outclassing other practitioners by from fifteen to thirty percent. To put the contrast in relative terms, the

[8] 33 Harvard Law Review, pp. 168-197, at pp. 185-189.

college graduate lawyer has in North Dakota practise shown himself about a third more successful than his less well-equipt rivals.

Another local consideration, indicating that the change here advocated would cause no appreciable wrench in the already formulated educational plans of students, is that North Dakota has a first class University within its borders ready to provide the standard two years college work or more and that North Dakota has the University Law School which is a member of the Association of American Law Schools composed of the best law schools of the country and is already complying with the standards set up by the American Bar Association as the standards for legal education. The American Bar Association standards of legal education require two years of college work and three years of work in a first class law school as a prerequisite to admission to the bar. North Dakota already has a University which provides the college work, North Dakota already has the Law School which provides the required law school work and both the University as a whole and the Law School in particular are already complying in every detail with the standards adopted by the American Bar Association. So far as the local situation is concerned therefore the only parties to be affected appreciably by the new regulation, if adopted, would be the students registered in law offices as distinguisht from students taking law school work.

2. MORAL CHARACTER

The need for at least two years of college preparation as a means of developing the desire and ability to understand and maintain high ideals of professional conduct is also indicated both by general considerations and by local information.

a. *General Considerations*

The general considerations indicating the bearing of collegiate preparation on the moral character of candidates for admission to the bar are exprest by Silas Strawn in the following extracts:[9]

> "....For two years it was my privilege to serve as a member of the Committee on Character and Fitness of candidates for admission to the Bar of the State of Illinois. During that time there came before our committee more than 400 applicants. Speaking generally, the weakness of the character and fitness of these applicants did not consist in their lack of

[9] Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, pp. 49-50.

technical knowledge requisite to pass their examinations. It was because they were lacking in the appreciation of the ethics of the profession and of the moral obligations which rest upon a member of the Bar. Many of them were imbued by a desire to take a short cut to a license because they craved the opportunity to prey upon clients. Others regarded admission to the Bar as a badge of honor without any appreciation of its attendant responsibilities.

"It was our unvarying experience that the lack of ability to distinguish between right and wrong and the failure to realize the ideals of the profession were most prevalent among those who did not have a college training.

"Therefore, while it may be admitted that there are exceptions to the rule, and that a college education with its advantageous environment and disciplinary opportunities does not always overcome an inherent moral obliquity, I submit there can be no supportable argument against the proposition that a college experience and training necessarily develops 'the desire and the ability to understand and maintain high ideals of professional conduct.' "

b. *Local Information*

Statistical material on how far educational qualifications are reflected in the moral conduct of the bar is in North Dakota, as in most other places, practically negligible. This dearth of accurate data upon the moral question is locally due to the lack of adequate records until within the last twenty years of the educational preparation of candidates admitted to the bar on examination, to the lack of any such records whatever in cases of admission on motion where the candidate is already a member of the bar of another state, to the impossibility of generalizing from the mere handful of disbarment cases and cases of censure that have actually occurred within the state, to the further circumstance that where such cases have occurred they have usually involved members whose educational qualifications are not a matter of record, and to the fact that most of the members actually disbarred have been again reinstated.

The conclusions herewith presented as reflections on the local application of the effect of educational qualifications upon the moral character of the bar are therefore largely personal conclusions dependent upon the personal impressions of the writer. Others whose personal contacts have been different may with equal freedom draw

other generalizations leading to results either more or less severe than those herein set forth. In this connection it must be remembered also that questions of moral standards as such are elusive and intangible and are not susceptible of the same accuracy of definition and classification which can be expected for scientific facts. With these cautions the following suggestions are submitted as reflections having local application.

In the opinion of the present writer the moral standard of the bar of North Dakota is exceptionally high. The argument regarding the effect of improved educational qualifications upon the moral character of the bar can therefore not be emphasized in this state to the same extent as is proper in reference to some other states. The bar of this state constitutes a fairly homogeneous body with common ideals, reflecting in this regard the analogous condition of a fairly homogeneous rural population with common ideals of thrift, industry, and probity. The individual exceptions that can occasionally be pointed out represent unfortunate developments in sporadic cases rather than a chronically defective moral tone on the part of the bar as a whole.

Despite the high moral standard which it is the opinion of the present writer that the North Dakota bar possesses it is appropriate to recall that the office of attorney and counselor is an office of trust in which the well-being, the safety, the property, and the liberty of the individual client is in instances of litigation frequently committed for practical purposes to the integrity and ability of the lawyer to uphold, while the more general considerations of social welfare equally depend on legal recognition. Unless the lawyer is intellectually honest as well as intellectually capable dereliction from duty is likely to follow to the individual injury of the client in question, to the discredit of the bar as a whole in the opinion of the community, and to the social injury of that community where administration of the law has miscarried. Moral standards in the bar can therefore not be too high and if there is reason to expect that improved educational qualifications would further improve the moral tone of the bar as a whole that consideration is an additional reason in favor of improved educational standards.

Even slight consideration of the subject must indicate that improved educational qualifications while not directly eliminating crooks from the profession have a strong tendency to prevent the development of crooked tendencies on the part of incoming members of the bar. In the first place, incompetent members carrying crooked ten-

dencies would fail to qualify as members of the bar for lack of fulfilling the requisite educational preparation. While this feature may not be extraordinarily important taking the group as a whole it will have its good effect so far as it goes. In the second place, thoro educational training for the candidates for the bar who are successful in securing admission will stiffen their moral backbone and enlarge their range of information to prevent their going astray. Since the first departures from the road of strict uprightness are usually at the time regarded as insignificant or conceived of as justified by temporary emergencies or are simply due to ignorance and lack of attention, the importance of the training that shall reduce such first departures to the minimum can hardly be exaggerated. In the third place, since improved educational qualifications admittedly bring about greater efficiency for legal work on the part of those who profit by it, the greater success in honest practise resulting therefrom must necessarily tend to diminish the strain on the personal honesty of members who might otherwise be sorely tempted. For all these reasons, therefore, it is submitted that even in North Dakota the moral considerations applicable point to improved educational qualifications as appropriate means for improving the bar of the state for its public service to the community.

3. SUMMARY ON COLLEGE EDUCATION

The need for at least two years of college training is summarized by the Special Committee in the following extract:[10]

> ".... With respect to standards, the question which first suggests itself is concerned with the kind of students who shall be admitted to law schools. What should be their moral and intellectual equipment?
>
> "It is plain that the student's moral character should be above reproach and that his mind should be ready for sustained and consecutive thought. We know of no system of tests which can reveal the moral character of a young man just beginning the work of life; and we know of no system of examinations which can satisfactorily reveal his mental power. Character tests in most cases would only be perfunctory, and examinations could disclose little save knowledge or ignorance upon certain specific points.
>
> "We are convinced that educational experience is the surest guarantee of a good moral and intellectual equipment. The

[10] Report of the Special Committee to the Section of Legal Education and Admission to the Bar of the American Bar Association.

completion of a high-school course is now generally recognized as a prerequisite to the study of law. We go further than this and advocate requiring at least two years of study in a college. Because a man has studied in a college it does not follow of necessity that he is ready for the study of a learned profession. But the probability that he is ready is very much increast. His understanding and sympathies have been enlarged and a beginning has been made in the habit of independent and vigorous thought. The difference between the social and educational atmospheres of school and college justifies the conclusion that an intending lawyer should have the benefits of both before he is called upon to take up his life's work. A minimum of two years of college will give him an understanding of his country which comes largely from contact with those of other places and of other ways of thought."

III. Law School Preparation

The need for law school training for the practise of law is best set forth thru explanation of the inadequacy of office training. A few remarks regarding law school standards may thereafter appropriately follow.

1. Inadequacy of Office Training

The inadequacy of mere office training as a preparation for the practise of law is variously exprest in the language of different eminent professional authorities as well as emphatically indicated by the local information available.

a. *General Professional Opinion*

The Special Committee of the Section on Legal Education of the American Bar Association expresses its view of the inadequacy of office training in the following terse paragraphs:

> ".... A hundred years ago a student learned law in the office of a preceptor. This was possible because the preceptor had time to teach and because the bulk of recorded law was small. In a period of comparative simplicity, a thoro knowledge of standard text books and of a few leading cases was sufficient equipment for admission to the bar.
>
> "Now all this has changed, because of the rapidly widening field of human relations. A successful modern lawyer has scarcely time enough to do his duty by his clients. His periods for instructing or quizzing students can only be few and hur-

ried. The volumes of case law and of statute law have multiplied many times, so that neither office preceptor nor student can intelligently handle them in the time available. The inevitable result is to relegate the office student to hornbooks and to cramming devices to meet the examinations for admission to the bar. No such system can compare favorably with a system of intensive study pursued for a prescribed period under the guidance of specially qualified teachers.

"From an office training it is true that the student obtains some familiarity with practise. But this is of trifling importance in comparison with the disadvantages which he suffers in the learning of substantive law. Practise courses have been developt in most of the good law schools and it is, to say the least, doubtful whether these are not of more value to the intending lawyer than the desultory experience which can be had in an office by one who is not a member of the bar. Legal aid society experience has also been used with good results in connection with law school work.

"We, therefore, recommend that applicants for admission to the bar should be required to have graduated from a law school."

J. Nelson Frierson of South Carolina expresses it as follows:[11]

".... There was no law school for him (James L. Pettigrew) to go to, and yet he learned law, and then in turn he was a law school for many young men. A great many fine lawyers graduated from his office. There is no such opportunity for that sort of thing today."

Mr. George E. Price of West Virginia uses the following language:[12]

".... I have endeavored in this brief way to indicate something of the scope of the labors and the field of the activities of the modern lawyer.

"He is no longer a man apart; in fact, he is merely an integral part of a great moving system. To be effective he must keep in touch with these rapid developments, both in the economic and political world and in the field of the law. He is obliged to keep up some knowledge of the trend of the decisions of the courts. He no longer employs a mere clerk or student to

[11] Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, p. 78.
[12] Ibid. pp. 122-123, 125.

prepare his papers. He dictates his papers to his stenographer and they are reproduced, and manifolded, upon the typewriter. He has but little time for anything else during his office hours except business; that is, if he is a competent lawyer and has attained to any responsible success in his profession. If he has not, then he could not make a very satisfactory tutor or instructor of a law student. He no longer sits in the chair in front of his office and discusses politics and public affairs. He no longer resorts to the court house and listens to the trial of cases in which he is not interested. When his office work is done, he seeks recreation in his automobile; his family demands that he take some part in social activities. There is no chance for his giving any attention to the training of young men in his office for the Bar....

"The conclusion, therefore, is inevitable; that it is now almost impossible for a young man to acquire an adequate legal education simply as a student in a law office; but the provisions that are made for education in the law schools in nearly every state in the union, the facilities for travel, and the helping hand that is always held out to the worthy young man, render it possible for almost anyone to obtain the necessary legal training under competent professors in these schools. And very few who have the mental and moral qualities necessary to make real lawyers will be prevented from obtaining admission to the Bar by the requirement of a reasonable course of training in a law school."

Mr. George W. Wickersham of New York, formerly attorney general of the United States, speaking to the same effect says:[13]

"....The law schools became necessary because the growth and complexity of modern law made it impossible for a successful practitioner to give the time and attention to his students necessary to fit them to enter upon the profession when so much more was required than had been the case in earlier years."

Mr. Julius Henry Cohen of New York puts it this way:[14]

"....It is the opinion of the committee, and it was the opinion of the American Bar Association, that just as in the case of the practise of medicine, it is not practicable to secure a legal training except in a law school. While it may be prac-

[13] Ibid. p. 125.
[14] Ibid. p. 161.

ticable to secure the equivalent of a general education by industry and perseverance, it is not practicable to get the tools of your trade in anything but an adequate law school."

Mr. William Draper Lewis of Pennsylvania sums up the matter in the following extract:[15]

> ".... The system by which a young man learned law in a law office has been dead for decades. The illusion that it still exists is one of those things that impede legal educational progress. To sit in a lawyer's office and read a law book or to act as his typewriter or stenographer, is not to 'go thru a law office' in the old sense of the word. The law student has not left the law office, the law office has left the law student. In the modern law office there is a place for a typewriter, a bookkeeper, and a clerk; there is a very real place for the law school graduate who is well-grounded in legal principles and knows how to find the law; but there is no place at all for the young man who wants to sit around and pick up the odds and ends of practise while he reads examination cram books or good or bad legal text-books."

b. *Local Information*

Local information emphatically bearing out the statement that law office preparation has become inadequate as a preparation for the practise of law is abundant. During the period embraced in the twelve years from 1902 to 1913 less than seven percent of the men admitted to practise in North Dakota on examination were exclusively office-trained men. To be exact, there were 546 candidates for admission to the bar admitted on examination during that period. Of these only thirty-six were exclusively office-trained men. Since 1913, down to the present time (September, 1922), 195 candidates have been admitted on examination. Of these only thirty were exclusively office-trained men, altho this period covered the war years when students of college age and practically all law school students interrupted their professional preparation to enter the military service. Taking the last twenty years as a whole, 741 candidates have been admitted on examination, of which only sixty-six have been exclusively office-trained men. This makes an average for each year of only three and a fraction office-trained men. For the last twenty years, therefore, including the war years when law school training was for the most part suspended by students eligible

[15] Ibid. p. 196.

for military service, less than nine percent of the lawyers admitted on examination have come exclusively by the office route. In other words during the past twenty years the candidates for admission themselves have demonstrated that office preparation is by them regarded as inadequate as they have resorted without large exceptions to law schools of one type or another to get their legal preparation.

Even the remnant of office-trained candidates that is left in this state itself demonstrates, in the acts of its few members, the recognition of the inadequacy of office training. In Bismarck a few of the government clerks connected with the state departments have been registered as students in law offices. Among them a movement was put under way to get a substitute for standard law school instruction, by organizing a class to meet at stated times in the evenings for more systematic instruction by certain members of the Bismarck bar. In other words, because of the felt inadequacy of attempted office training steps were taken to improvise a law school, thus pointedly illustrating locally the statement of William Draper Lewis of Pennsylvania, already quoted, that "the so-called office student of today learns his law not in the law office but in the afternoon or evening law schools." Without pausing to discuss the question of the quality of instruction offered there, or the question of how such clerks in government employ can "actually and in good faith pursue a regular course of study of the law for at least three full years in the office of a member of the bar in regular practise" as the statute now requires and at the same time be performing their duties as state employees, it is abundantly plain that those so-called office students are finding that office study as a means of legal preparation is sadly inadequate.

Another indication to the same effect is the effort occasionally made by office students to get personal assistance from the law schools. A recent letter to the present writer from one such North Dakota office student in quest of information contains the following explanation for the request: "Of course I never had any instruction, or not to amount to anything. All I ever had to guide me was a Law Quizzer, Text Book, and Code." In the face of such facts all who are not deliberately blind can see that while the system of office registration is still officially maintained in North Dakota, it constitutes only a trap for the unwary since substantial legal instruction to beginners in law offices as a matter of fact does not exist.

Actual admission to the bar in North Dakota would be almost untouched by the elimination of admission by the office route. It

is true enough that many of the present members of the bar of North Dakota, especially among the older men, received their training in offices and were admitted to the bar on the basis of their office training. It is true also that an appreciable number of prospective law students register as office students with some member of the bar. Some of these registered office students, however, are law school students who fill in time during the summer. Many others, also, of the registered office students on finding that office preparation is not satisfactorily getting them anywhere either drop out of the running altogether or go to some law school to get their serious preparation. Those who administer law schools can from personal observation testify to this fact, even tho no statistical tab ulations on it have been made. Attorneys who register students can no doubt often tell the same story. It thus results that many students at any one time carried on the clerk's register as office students are in fact law school students before they come up for examination or are persons once prospective candidates for the bar who have in fact now dropt out altogether. The preparatory office training of two generations ago has disappeared as a practical matter from North Dakota just as it has disappeared from every other state and candidates for admission to the bar of North Dakota now without large exceptions are equipt with law school training. They get the routine office training in addition after admission to the bar when they go into offices either with older practitioners or on their own responsibility, having by that time learned enough law to be useful members instead of nuisances in law offices. Serious office preparation as such has become impossible in fact as already variously explained and most of the candidates themselves have long since seen its futility.

So far as the occasional instances are concerned where a young man is still seriously planning to enter the legal profession on the basis of office preparation alone he is led to do so either by poor advice or by lack of proper information as to present conditions of legal knowledge and of present conditions of practise of law. For the protection of the individual students who are candidates for admission to the bar, as well as in the interest of improving the quality of the legal profession as a whole for the protection of clients, it is therefore desirable to make the rule uniform that law school preparation should be required as a requisite to admission.

2. THE LAW SCHOOL STANDARD REQUIRED

The American Bar Association standards for law schools in

accordance with which classification of law schools is now going on and on the basis of which recommendations of schools are to be made, need not prolong the consideration of the question of improving bar admission requirements so far as North Dakota is concerned. North Dakota provides a State University complying with the American Bar Association standards of college education and North Dakota provides a University Law School complying with the American Bar Association standards for law school work. North Dakota law students can therefore not be seriously affected in their educational opportunities thru requirements for admission to the bar embodying the American Bar Association standards. It may be added further that there are in other states numerous universities and first class law schools to which North Dakota students may resort and get first class legal education satisfying the American Bar Association standards if for any reason their plans should take them elsewhere than to North Dakota's own educational institutions.

(To be concluded in the next issue.)

Improving North Dakota Bar ADMISSION Requirements II

Improving North Dakota Bar Admission Requirements II

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(Continued from the issue of October, 1922. See pp. 59 to 76)

C. OBJECTIONS TO THE RAISING OF BAR ADMISSION REQUIREMENTS

The objections to the raising of bar admission requirements that are met with in various forms and under various disguises may be summarized under four general heads. In the first place it is objected that requiring a college education does not improve the standard of the profession. In the second place it is contended that raising the requirements for admission to the bar is unjust in that it imposes the hardship of excluding the poor man's son who has to work for a living. In the third place it is contended that it would be undemocratic to raise the standard for admission to the bar beyond the reach of the bulk of the population. In the fourth place is inertia, the conservative attitude which instinctively objects to change beacuse it is change, which wants to let well enough alone because it is instinctively thought that as things were in the beginning so are they now, and should continue to be without end thruout all eternity. Attention may therefore appropriately be given to each of these objections in turn.

I. FUTILITY OF COLLEGE EDUCATION

The first objection, that the requirement of a college education is useless, is not usually seriously made as an objection by itself but is usually connected in some way with the argument that raising requirements makes it too hard for the poor boy. It is occasionally stated, however, that a college education is for the purpose of legal preparation futile as a definite requirement,[16] and the explanation proceeds on the basis that bad as well as good can come out of college education and that it depends upon the individual alone whether a college education in his particular case would make him better or worse as a citizen of the community. It would seem that in a state which deliberately supports a state university as a matter of educa-

[16] Thus, for example, remarks by John Bell Keeble, of Tennessee and Charles S. Thomas of Colorado, at pages 66 and 149 respectively of the Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates.

tional policy, the presumption must clearly be that a college education is on the whole a useful experience for the individual student, designed to render him a better citizen. Unless that conclusion is reacht the basis for the state's support of a university in its educational system disappears. It is therefore hardly necessary in the state of North Dakota to discuss the question whether a college education is in itself desirable as an element in the preparation for the practice of law. The available statistical information also strongly indicates, as already pointed out, the increast legal efficiency attributable to a college education.

The objection that educational qualifications would be futile as means of improving the quality of the legal profession is occasionally put on the ground that educational qualifications fail to discriminate between crooks and honest men. When the objection is stated in this form it is usually admitted at least for the time being that educational qualifications increase legal efficiency. It is asserted, however, that since the educational qualifications cannot eliminate the crooks from among the applicants for admission to the bar that increasing efficiency thereby makes crooks more efficient and does not tend to improve the quality of the legal profession. While this argument may at first notice seem impressive it requires but slight consideration to detect its superficial character. It may be freely granted that educational qualifications as such can not directly discriminate between the intellectually honest and the intellectually dishonest applicants. One may go further and say that there are no tests of any sufficiently reliable character which can be resorted to for the purpose of finally determining the character of young men just starting out in life and that therefore the possibility of development of the efficiency of crooks as well as of honest men must inhere in the problems of admission to the bar. The educational sun must shine on the righteous and unrighteous and the educational rain descend upon the just and the unjust. Granting all this, however, leads nowhere in the consideration of the question. Lack of education does not make applicants for admission to the bar more honest. Failure to require educational qualifications affords the public no protection against the presence of dishonest members in the legal profession. It is a barrenly negative argument to contend that where greater efficiency and greater integrity are both needed that therefore educational qualifications which admittedly would increase efficiency should not be required because forsooth they cannot also guarantee a hundred per cent greater integrity.

When the argument in this aspect is examined more closely it appears that even the assumption that greater integrity cannot be expected to result from educational qualifications is misleading. Improving educational qualifications would result in greater efficiency. So much is granted even by most opponents of improved requirements for admission to the bar. By the process of requiring greater efficiency improved educational qualifications also have a decided trend toward securing greater integrity in the character of the bar as a whole. This can be readily graspt by noting the various modes in which that effect is brought about. In the first place incompetent crooks would be eliminated from future membership in the legal profession. For so much many poor victims among the public would have occasion to be thankful. In the second place, the more able candidates whose character bears possibilities of crooked development would be subjected to the more intensive course of training that would tend to keep them straight and prevent their becoming crooks. The importance of this feature can hardly be exaggerated when it is recalled that the first moral pitfalls into which young practitioners fall are usually misfortunes, the results of inadvertence or ignorance which get them into compromising positions that they would not have been willing to assume with eyes open. In this regard the process of a young lawyer's becoming a shyster is in many respects similar to the process by which a young man was wont to become a drunkard. A first drink didn't make him a drunkard but a first drink led to a second and so on until the appetite became uncontrollable. Improved educational qualifications would go a long way toward securing by the processes of development and selection competent members for the legal profession. Competent members would be much less likely to fall inadvertently into mistaken practises of questionable moral connotations. In addition to that, definite instruction in the ethics of the profession systematically given in law schools can serve to keep the eyes of the young legal practitioner open to possibilities of moral pitfalls in practises which in other occupations with other settings and responsibilties might be regarded as innocent. In the third place improved educational qualifications would tend to secure a higher average of moral conduct on the part of the members of the legal profession in that such improved educational qualifications would develop greater efficiency on the part of the members thereby enabling them to carry on their practise more successfully and therefore more remuneratively. Greater individual success in honest practise would reduce the temptations to go astray

and thus diminish the strain upon the individual member's honesty. In other words, so far as the legal profession is concerned, improving educational qualifications is the answer to the prayer "Lead us not into temptation." In a sentence, therefore, improving educational qualifications would tend to improve the moral caliber of the legal profession in that it would tend to eliminate the naturally incompetent who may have crooked tendencies, in that it would stiffen the moral backbone and increase the range of vision for guarding against moral pitfalls on the part of the more capable candidates, and in that it would increase efficiency for successful honest practise, thereby reducing the temptations to questionable conduct.

It is therefore sufficiently demonstrated that improved educational qualifications are not futile as means for improving the legal profession, since they both increase legal efficiency and tend to strengthen the moral character of the membership in the legal profession.

So far as there is merit in the objection that improving educational requirements may prove futile as well as useful it raises not a question of special concern regarding the education of lawyers but it raises the more general question whether the State University as at present conducted is performing its maximum service under present conditions. Those in charge of educational institutions freely admit that there are possibilities of improvement which may become realities as fast as time and means and experience permit. The criticism upon the unrestricted application of the elective system in college education that it develops "intellectual vagrancy," to use the pithy phrase of Secretary of State Hughes, has already been met, in the last decade, by requirements regarding concentration and distribution of studies to secure what may properly be regarded as a liberal education. Further adjustment of details and standards of work in the light of developing experience may freely be expected. That the good in the university training provided for the youth of the state far exceeds its possible evils is eloquently testified not only by the continuous support rendered by the state to its university but also by the strikingly increasing proportions of students as compared with the population which annually resort to it, an increase symptomatic in North Dakota as elsewhere in the United States of constantly increasing appreciation of the benefit of collegiate training.

II. Hardship on the Poor Boy

The second objection to raising the requirements for admission

to the bar to conform to the American Bar Association standards of two years of college and three years of law school preparation is that it may work hardship in excluding from the opportunities of legal practise occasional poor but capable candidates who if once admitted would become creditable members of the bar. This is the objection upon which most stress is laid by all who oppose improvement in bar admission requirements.[27] The objection is sometimes put rhetorically in the form of "closing the doors of opportunity upon young men in this free and democratic country," and confirmation is sought by referring to the careers of some of the great lawyers of several generations ago, such as Abraham Lincoln, Henry Clay, and John Marshall.

The answers to the "poor boy" argument are several. In the first place there is the answer that it is not true, the answer that the facts belie the hardship. In the second place there is the answer that the hardship is on the other side, in misleading the poor boy into attempting to enter the practise of law without adequate training. In the third place there is the answer that the hardship upon the public arising thru the blunders and incompetence of inadequately trained lawyers far outweighs any showing of hardship that requiring adequate training can possibly impose upon any capable young man under present educational conditions. These answers to the "poor boy" argument may be further elaborated in turn.

1. FACTS BELIE THE HARDSHIP

The first answer to the "poor boy" argument is that it is not true. Granting that there may have been substance to the "poor boy" argument two generations ago or even one generation ago, the facts in the educational world have become so changed that at the present time no young man with sufficient ability to acquit himself creditably in the practise of law need go without the appropriate preparation of college and law school training.

a. *Universal Accessibility of Educational Opportunity*

As appears more elaborately in the statistical tables appended in

[27] Thus practically all who spoke in opposition before the Conference of Bar Association Delegates in some from or other included this argument in their remarks.

the note[18] educational opportunities are now universally accessible. High school education has in the past fifty years increast several hundred percent in proportion to the population in the country. Thruout the last fifty years the enrollment of children in schools of the country has constituted approximately twenty percent of the total population. Fifty years ago, however, only a little over one percent of this school population was found in high schools. At the present time approximately eight percent of the school population of the country is found in high schools. In other words the accessibility and resort to high school education has increast in the last fifty years almost eight hundred percent until at the present time facilities for high school education are available to practically everyone the country over who chooses to devote the time and to make the sacrifice of effort necessary to the pursuance of high school work. When the North Dakota high school situation in particular is examined we may even go a little farther in specifying details.[19] North Dakota has one hundred and forty-seven recognized public high schools within the state. In addition to these recognized public high schools there are almost three hundred consolidated schools offering two years or more of high school work making in all almost five hundred different schools in various parts of the state where high school preparation in substantial degree can be secured. So far as the educational opportunities are concerned, therefore, thruout the

[18] The following figures are taken from

THE DEPARTMENT OF INTERIOR, BUREAU OF EDUCATION
BULLETIN 1920.
No. 11.
Table L (pp. 4-5)

Year	Total population of the United States	Children enrolled in common and high schools	Children enrolled in public high schools	Percent of total population enrolled in common and high schools	Percent of pupils in public high schools
1870	38,558,371	6,871,522	80,227	17.82	1.2
1880	50,155,783	9,867,505	110,277	19.67	1.1
1885	56,221,863	11,398,024	160,137	20.27	1.4
1890	62,622,250	12,722,581	202,963	20.32	1.6
1895	68,844,341	14,243,765	350,099	20.69	2.5
1900	75,608,515	15,503,110	579,251	20.51	3.3
1905	82,584,061	16,468,300	679,702	19.94	4.1
1910	91,972,266	17,813,852	995,061	19.56	5.1
1915	100,399,318	19,704,209	1,328,984	19.63	6.7
1918	105,255,300	20,853,576	1,645,171	19.81	7.9

Comment on page 6 says the slight decrease in percent of total population enrolled in schools has not been due to less complete enrollment of school children but to the decreasing percentage of children in the total population.

Figure 3, page 10, shows that in 1917-1918 the percent of North Dakota pupils enrolled in public high schools was 6.9.

[19] Counts made from the North Dakota Educational Directory 1921-1922, issued by the State Department of Public Instruction, show one hundred forty-seven recognized North Dakota high schools, and three hundred sixty-eight consolidated schools where one year or more of high school work is offered. Among the consolidated schools so listed seventy-seven offer one year's high school work, all the others offering two or more years.

country in general and in North Dakota in particular, opportunities for education up to the entrance of college doors is universal and open to everyone showing the requisite ability to do the work.

So far as college education is concerned the same case of universal opportunity is at the present time readily demonstrable. While statistical data do not carry us back fifty years they show a striking improvement in the distribution of collegiate education thruout the population during the last thirty years.[20] Collegiate, graduate, and professional attendance has increast in the last thirty years at the rate of one hundred thirty-nine percent while the total population of the country during the same period has increast sixty-eight percent. In other words within the last generation the growth of collegiate education in proportion to the population has more than doubled. At the present time it is estimated that college graduates are so numerous as to constitute one out of every one hundred sixteen of the total population and one out of every sixty-one adults. The general prevalence of opportunities for collegiate education can be put quantitatively in another way by pointing to the fact that during the last ten years there have been graduated from colleges an average of more than three hundred thousand students every year. So far as the local situation in North Dakota is concerned opportunities for collegiate education are not behind the general availability

[20] The following figures are taken from
THE DEPARTMENT OF INTERIOR, BUREAU OF EDUCATION
BULLETIN (1920), No. 34, ON UNIVERSITIES,
COLLEGES, AND PROFESSIONAL SCHOOLS
From Table I (part 1) pages 6-8 and Figure 5 page 19.

Year	Total number of students enrolled in universities, colleges, and professional schools	Percent of population of college age (19-23) actually enrolled in universities, colleges, and professional schools
1890	156,499	3.4
1892	171,596	3.5
1894	183,583	3.6
1896	193,946	3.6
1898	187,533	3.3
1900	197,163	3.3
1902	208,765	3.4
1904	226,449	3.5
1906	258,603	3.8
1908	265,035	3.8
1910	274,084	3.8
1912	318,423	4.2
1914	334,978	4.3
1916	387,106	4.8
1918	375,359	4.6

Comment on pages 16 and 19 calls attention to fact that total collegiate, graduate, and professional attendance has increast from 1890 to 1918, at the rate of 139 percent, while total population in the country has increast 68 percent in the same period. Comment on pages 28 to 30 estimates that there is now one college graduate for every 116 persons of total population, and one college graduate for every 61 adults.

of college opportunities for the country as a whole. North Dakota maintains its own State University at Grand Forks and maintains the Agricultural College at Fargo. In addition to these collegiate institutions the state maintains various normal schools and other educational institutions doing work of college grade. In addition to these public institutions there are also within the state several privately endowed educational institutions to which students may resort for collegiate work if they so desire. North Dakota therefore presents no lack of opportunities for collegiate training.

Law school training, similarly, is now universally accessible to those who desire to attend and are capable of doing law school work. There are in this country approximately one hundred forty law schools, at least three-fourths of which either are now complying with the American Bar Association standards of law school education or which may readily be brought up to those standards.[21] When put in figures of historical comparison it appears that during the last forty years the ratio of law students to the whole population and similarly

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[21] The following summary table for contemporary law schools is given by Mr. A. Z. Reed of the Carnegie Foundation, in the Carnegie Foundation Bulletin, No. 15, at page 441:

SUMMARY

High-entrance full-time schools				Part-time schools offering courses of standard length			
*IIIM3	2			IA3	2		
*IIIM3 or IIIM4	1			A4 E4	3		
IIIM3	4			A3 E4	1		
IIIA3	1			A3	7		
IIIM3 or IIM4	1			A3 E3	10		
IIM3	20			IIE4	1		
IIM3 or equivalent	1	30	(21%)	E4	16		
Low entrance schools offering full-time				IIE3	1		
IM3	14			E3	14	55	(39%)
IM3 or equivalent	2			Short-course schools			
M3	17			M2	5		
IM3 IE5	1			M1	1		
IM3 E4	1			A2	1		
IM3 or equivalent E4	1			E2	9	16	(11%)
M3 A3	1						
M3 E4	2						
M3 A3 E3	2	41	(29%)	Total number of schools—142 (100%)			

I, II, III, denote the number of academic years required to have been spent in a college prior to admission: *, that a college degree must have been obtained,

M (morning) denotes that the law course requires the student's full time; A (afternoon), E (evening), only part of his time, while in residence.

1, 2, 3, 4, denote the number of years residence required to complete the law course.

"Equivalent" denotes a dovetailing of college and law school work, not affecting the total.

The symbols in all cases denote the requirements in force during the academic year 1920-1921. Announcements of future changes are not included.

the ratio of law school graduates has more than doubled.[22] Opportunities for law school education are available to students in practically every part of the country, and students who intend to enter the legal profession now without large exceptions attend law schools. In North Dakota is located the State University Law School, already complying with the American Bar Association standards. First class law school training, then, like preparatory and college training, conforming to the American Bar Association standards, is therefore universally accessible to those who desire to attend and are capable of doing the work. Such training is accessible to students thruout this country and such training is accessible to students in North Dakota.

b. *Ability is the Only Limitation*

With the universal availability of these educational opportunities the principal limitation on any individual's possible educational attainments will be found on the score of his own abilities. It may be freely granted that there are differences in aptitude among individuals and that there may be individuals in the community whose abilities while good or even excellent in various other directions do not enable them to do advanst educational work satisfactorily. This limitation, however, is also a limitation on the possibility of such individuals doing satisfactory legal work if admitted to the practise of law. It may therefore be stated with the universal agreement of everyone concerned that unless a person has the requisite native abil-

[22] The same compiler gives the following table in the same volume, at page 442.

	1850	1860	1870	1880	1890	1900	1910
Population	23,192,000	31,443,000	38,558,000	50,156,000	62,948,000	75,995,000	91,972,000
Number of lawyers	23,939	34,839	40,736	64,137	89,630	114,460	122,149
Number of lawyers to each hundred thousand of the population	103	111	105	128	142	151	133
Number of law schools	15	21	31	51	61	102	124
Number of law schools to each ten million of the population	6	7	8	10	10	13	13
Number of law school students	400	1,200	1,653	3,134	4,518	12,516	19,567
Number of law school students to each hundred thousand of the population	2	4	4	6	7	16	21
Number of students graduating	.....	.....	.....	1,089	1,424	3,241	4,233
Number graduating to each hundred thousand of the population	.....	.....	.....	2	2	4	5

ity to do educational work satisfactorily he is utterly hopeless as a prospect for successful law practise.[28]

It ought not to be necessary to do more than to call attention to these educational facts in order to convince the most sceptical that the educational opportunities of the present day are so universally available that the requirement of two years of college and three years of law school work in accordance with the American Bar Association standards does not exclude any one with the necessary ability to do the work from the opportunity to become a member of the legal profession.

c. *Poverty No Limitation to the Capable*

It may be argued that while educational opportunities are scattered broadcast thruout the land and thruout the state of North Dakota that there are nevertheless poor boys whose poverty still prevents their attending such advanst educational institutions. The answer to this aspect of the argument is that while such a state of facts may readily be supposed it does not apply to cases where the candidates in question have the ability requisite for successful law practise. The scores and hundreds of young men working their way in whole or in part thru every reputable institution in this country is one of the most encouraging aspects of the development of democracy. The practise of law requires hard work. Adequate preparation for the practise of law requires hard work. The poor boy who has learned how to work works his way thru college and works his way thru the law schools just as he works his way to fame and fortune in every line of activity and just as he works his way to success in the practise of law after his admission to the bar. That this statement is not exaggeration taking the country as a whole may be readily gleaned from the following extracts:

The Special Committee to the Section of Legal Education of the American Bar Association puts the case as follows:

> "....The American Medical Association has for some years urged a requirement of two years of premedical college education, and as a result of their efforts such a requirement has been adopted by law in seventeen states (including North Dakota).
>
> "To adopt a similar requirement with respect to law schools

[28] Should anyone need confirmation on this head he need only refer back to the previous discussion, in the earlier part of this paper, devoted to the need of better training for the bar.

will not prevent the poor boy from coming to the bar. There are today widespread opportunities for scholarships and for earning one's way thru college. No man who wants a college education need go without."

Mr. William B. Hale of Illinois puts the case for his state as follows:

"....I would like to read a few figures which are in response to a questionnaire which we sent to the last 1900 men and women who came to the Illinois Bar, that is, those who came in the last two years or a little more. Out of these 1900, 1064 replied, more or less, some replying to some questions and some to others. About a thousand therefore replied. Many went astray because of changed address.

".....One thousand eighty-three replied to the question of whether they wholly supported themselves while they studied law. Of these 644 wholly supported themselves while they studied law. That is, 60 percent earned their own living while they studied law. Twenty-six percent partially supported themselves while they studied law, that is, 86 percent of all those who have come to the Bar of Illinois in the last two years have either wholly or partially supported themselves during their law course. Only 14 percent not at all. Seventeen percent wholly supported someone besides themselves at the same time that they were studying law."

Mr. Frank H. Sommer of New Jersey speaking from the vantage point of experience in conducting a part-time law school puts the case as follows:

"....The proposed requirements raise a necessary barrier to entrance of the unfit and inadequately trained into the profession.

"This barrier presents, under present day conditions, no insurmountable obstacle to the man of average capacity unblessed by command of an overplus of this world's goods.

"A broader base of endowment for colleges not publicly maintained admits of a more liberal attitude in the grant of free and partially free scholarships to men of capacity."

It is needless to multiply citations from other parts of the country to demonstrate that it is entirely practicable for poor boys with ability to work their way thru college. Information to the same effect appears when the local facts in North Dakota are ex-

amined. There are hundreds of students at the University of North Dakota who each year earn the whole or a part of their expenses while carrying their regular college work. The business office of the University is in contact with many such instances. The Y. M. C. A. and Y. W. C. A. touch others. Lately a committee of the Commercial Club of Grand Forks has been acting to the same end. Beside these organized agencies, however, for connecting university students with jobs, there is the largest factor of all in such matters, the determination and initiative of the student himself to keep his eyes open for opportunities and to grasp opportunities that are available.

For the North Dakota University Law School students the data regarding their working their way have been gathered in much more detail thru a questionnaire circulated by the present writer to the graduates of the last decade. Out of 121 graduates of the law school to whom the questionnaire was addrest replies have been received up to this time (September, 1922,) from 46, that is, approximately from forty percent of the men who were graduated during this period. Since less than half of those who are admitted to the bar actively practise law, the replies received probably represent a large majority of the decade's graduates who are now in practise. The replies indicate that of these 46, 20 were entirely self-supporting, 18 were self-supporting in substantial part while only 8 acknowledged themselves to have been entirely supported by their parents while doing their educational work. Whether the proportions of self-supporting to non-self-supporting among those who failed to reply would hold good to the same degree may be doubted. Be that as it may, it is apparent that a very substantial fraction, if not indeed a majority as the figures indicate, of those who have been graduated from the Law School in the last decade have been dependent more upon their own efforts than upon anyone else for their means of subsistence.

The men to whom the questionnaire was sent were requested to indicate what jobs or employments they had secured in their efforts to work their way. The following are the occupations referred to in the replies:

Waiting on table down town and at the University Commons.

Library work in the general library, in departmental libraries, and in the down town library.

Odd jobs.

Farming during vacations.
Working for the Grand Forks Commercial Club.
Collecting.
University transfer.
Essay Contest prize.
Janitor work for the University, for churches, for apartment houses, for down town offices.
Bookkeeping.
Stenography.
Clerking in confectionery store, in clothing store, in grocery store, in bank, in University offices.
Meter reading.
Singing in theaters.
Playing at dances, at theaters, and at chautauquas.
Washing windows.
Mowing lawns.
Canvassing as book agents, aluminum salesmen, etc.
Editing student publications.
Playing professional baseball.
Acting as secretary.
Working in hotel.
Auctioneering.
Working in the federal seed loan office.
Working and saving before entering.
Acting as business manager of student publications.
Freight handling.
Working as clerk for legislative committees.
Working as mason.
Caring for furnaces.
Shoveling snow from sidewalks.
Working in the Y. M. C. A.
Reporting for newspaper.
Collecting for newspaper.
Acting as special contribuator to various newspapers.
Holding agency for various student supplies.
Surveying.
Holding laundry agency.
Acting as fireman.
Acting as electrician.
Acting as night baggageman.
Working in the bake shop.

Working in the supply department of the R. O. T. C.
Traveling on the road during summer and fall for various machinery companies.
Assisting professors.

Incidentally it appears from these replies that the individual student's generalizations as to the proportion of his classmates who are self-supporting are practically worthless. Each student apparently bases his generalization almost entirely on his own experience. The replies contained estimates on the part of each as to how others supported themselves, but those individual estimates bore a much closer resemblance to the person's own case than to the facts reported and tabulated for the group as a whole. Accordingly, in the tabulations given herein, use has been made only of the respective individuals' statements of their own cases.

The law graduates for the last decade were also invited to express themselves regarding the merits of the American Bar Association educational requirements. Out of the 46 replies, 18 exprest themselves favorably while 5 exprest themselves as opposed. Many failed to comment on the matter. While the questionnaire was not designed to suggest the sort of comment to be made it may be granted that the known attitude of the present writer may have had some bearing on this part of the correspondence.

Among the strongest comments in favor of the American Bar Association requirements that were received are the following:

"The variety of jobs open to one attending school is limited only by the ability of that person to think of and discover them."

"Those students who have workt their way thru school appreciate their education and are the ones that stick to their profession. You will find that after one is practising for a while the more education he has the better he can handle his cases. I am a great believer in the two-year college course before admission to the bar for you will find a better class of attorneys as it will elevate the standard."

"I am in favor of raising the standard to this extent for I believe that thereby the graduating law students will be better qualified and better fitted to practise the profession. I do not think that raising the standard for admission to the bar to two years of college work and three years of law school work will in any way exclude a poor but ambitious student."

"I feel that most any boy who wants to can get thru for there are opportunities to work if there is a willingness to wr

The conditions may not be the best and they may have to do work that they might not exactly like but if they really want to get an education finance is no real barrier."

"That is a matter which they may not appreciate at the time of the entry but they surely will appreciate such an education in later years when they will have to compete with men who are really qualified in every sense of the term in their profession."

"There are plenty of opportunities for those without money to get an education if they are only willing to work."

The most emphatic among the replies opposed to the American Bar Association standards contains the following extract which represents the trend of the entire opposition as exprest in the replies:

"I do not believe that the student should be compelled to take two years of college work before entering the law school because I believe that would render great hardship to those students whose people are financially unable to keep them in school five years."

It appears, accordingly, from the facts contributed by recent graduates themselves that there are abundant opportunities for working one's way open to those who care to make the effort and have the resolution to stick. That those who do not support themselves should think the opportunities for self-support limited is not surprising since they are not in contact with the matter and have little occasion to recognize such opportunities when available. Taking the testimony of the group as a whole, therefore, there is no question that where there is ability and willingness to work a way can be found to secure an education.[24]

d. *Few Affected by the Proposed Change*

The insignificance of the additional hardship, if any, which could result from the adoption of the American Bar Association standards of two years of college and three years of law school work

[24] Lest it should be thought by anyone that the present argument is made without personal experience of working one's way thru college and law school the writer submits the following personal account. He was born in South Dakota, of Norwegian parents who had immigrated three years earlier. He grew up on a farm, and received his common school education in a one-room country school house. He did farm work for hire to earn enough money to go to St. Paul, Minnesota, to begin a high school course, and workt his way while attending high school. After graduation from high school he went to Harvard University, and workt his way while attending there. After graduation there he attended the Harvard Law School, working his way while earning the degree of LL.B. He borrowed thereafter in substantial amounts to pay expenses while securing the degree of S.J.D., not for lack of chances for general work but to save all the time for study. The summer vacations were in every case devoted to working and saving for the expenses of the next year. While much of the work was laborious and exacting, the writer never experienst lack of something to which to resort for earning a living.

as applied to the situation in North Dakota appears in another way. At the present time the University Law School, the only law school in the state,[28] is requiring at least two years of collegiate work as a pre-requisite to admission and three years of law school work on the part of its students as a pre-requisite to graduation. The same requirements are maintained at the law schools of the state universities of Minnesota, South Dakota, Wisconsin, Michigan, Iowa, Illinois, and by most other first class law schools. Candidates for admission to the bar who come from outside the state in practically every instance come equipt with law school education and usually with prelegal collegiate records. In the years to come, after the American Bar Association classification of law schools is completed and publisht this is likely to be true in even greater degree. Practically the only candidates for admission to the bar who would be seriously affected by the proposed legislation to conform to the American Bar Association standards would be the group recognized as office students within the state. These students as already explained are very few in number, constituting less than nine percent of the candidates actually admitted on examination during the last twenty years. It thus appears that practically all the candidates for admission to the bar with only sporadic exceptions already take the course of educational preparation to greater or less degree instead of depending upon exclusive office training. The hardship upon poor boys who are unable to pay their way thru institutional education but who would be admitted to practise by the office route is therefore practically negligible. Candidates for admission to the bar with few exceptions have long since perceived that office training is inadequate as preparation for the practise of law and are no longer found in offices but in the University Law School and in law schools of various types outside the state. But few candidates, the students still in offices, therefore, would be appreciably affected by the American Bar Association standards.

The first answer to the "poor boy" argument may, therefore, be summarized in the statement that the facts themselves belie the alleged hardship that is insisted upon. The facts belie the hardship

[28] In the statement that the University Law School is the only law school within the state the activity of what has been called the Bismarck Night Law School is not overlookt. The so-called Bismarck Night Law School is not recognized as a school, however, either by the American Bar Association, or by the North Dakota State Bar Board. Its students attempt to satisfy the statutory requirement of study by certification as office students. Some of those students themselves have spoken of it not as a law school but as an attempt to organize an evening class of students registered in law offices. The present writer has not become aware of any other attempt to organize a class of law students in the state outside of the regular University Law School.

because educational opportunities are now universally accessible, because the only effective limitation on educational achievement is the individual student's own capacity for educational work, because abundant experience of working one's way thru shows that poverty is no serious obstacle to educational preparation for those who have ability effectively to practise law, and because under the present organization of legal education practically the only class of students that would be seriously affected would be the isolated instances of misguided office students who ought already for their own protection to have seen the necessity of more thoro preparation.

2. NEED OF STANDARDS TO PROTECT THE POOR BOY

A further answer to the "poor boy" argument against improved bar admission requirements which is getting more consideration with every passing year is the "poor boy" argument turned around. In other words, it is unfair hardship to impose upon the poor boy to mislead him by erroneous advice and low standards for admission to the bar into the delusive belief that complying with those formal minimum requirements is at all likely to open for him a successful career at the bar. Every passing year makes it more manifest that collegiate and law school preparation produce by far the most effective type of lawyers. Every passing year therefore with the increast resort to colleges and law schools on the part of candidates for admission to the bar makes it increasingly harder for those who come with exclusive office training to make good in the face of such competition. The poor boy who makes personal sacrifice in order to secure admission to the bar ought to be told what the real situation is. The poor boy who makes personal sacrifice for admission to the bar ought to be told that the only practical way in which to assure himself success in the practise of law is to secure at least as effective preparation as that with which his active competitors come equipt. More than one of North Dakota's present leading attorneys of the older generation has stated the case in substance as follows: "Had some one only told me when I got my office training, how important it was to go to college, I would have been much better off as a lawyer than I am now. Nor would the added preparation have deterred me. I would have sought the best, and got it." It is no kindness to the poor boy seeking admission to the bar to delude him into the belief that a period of cursory office study to satisfy the technical statutory requirement as it now exists is likely to lead to anything but failure. Improving the requirements for admission to

the bar is one of the surest sources of protection to the poor boy seeking admission to the bar that can at present be devised. Improving those requirements to conform to the American Bar Association standards will assure that every poor boy who aspires to become a member of the bar will secure first class preparation for his professional work. As already indicated every poor boy with the requisite ability to make a success in the practise of law has ability and opportunity to secure the educational preparation necessary. Improvement of the requirements for admission to the bar therefore will start the poor boy in his practise with at least a fair show of success as compared with his fellows whereas leaving the requirements as they are at present constantly tends to delude the uninformed poor boy into the belief that satisfying the minimum requirements as now fixt by statute is enough for the occasion. This only leaves him to find out his mistake by discovering that he is in danger of failure in his practise when it is likely to be too late in his life to go back and start over again. It is granted that most poor boys are not at the present time thus deluded. They already see the necessity for collegiate and law school education but to the extent that the minimum standard now set by statute actually operates it tends to deceive poor boys to their sorrowful failure without any practical possibility of rectification later in life by a new start.

3. COUNTERBALANCING HARDSHIP ON THE PUBLIC

A third answer to the "poor boy" argument against improving requirements for admission to the bar is that the hardship on the public of clients who suffer from the malpractise of incompetent, insufficiently trained attorneys far outweighs any possible hardship that can under present educational conditions fall upon occasional individual candidates for admission to the bar thru the requirement of American Bar Association standards of educational qualifications. The point of this feature of the case is graspt most easily when one looks at the situation among doctors and their patients.

a. *Illustration from Medicine*

If a patient is sick he requires treatment that will cure. A good doctor is required instead of a poor doctor in order to treat his patient effectively. The incompetent doctor's mistakes are buried under six feet of earth and it is considered no answer to the harm done by a doctor's malpractise that that doctor may have learned something by the mistake in the killing of his patient and that he is

therefore less likely to kill the next one. In other words, in the practise of medicine good doctors are required for the benefit of the public whom they serve and no one listens with the slightest patience to the suggestion that the field of practise ought to be open as it used to be to incompetent, untrained doctors in order to give them the opportunity to reap a rich harvest of fees at the expense of avoidable injury to their patients.

b. *Lawyers' Mistakes Cause Clients' Distress*

In the case of lawyers the argument for superior training in order to give the public that is served competent legal service is in many respects analogous to the case of doctors. Clients who get into difficulty whether in cases of criminal prosecution or in cases of civil litigation involving damages to person or property or involving their legal rights in other respects are practically dependent upon their attorneys in order to assure the maintenance of their legal rights. When things go seriously wrong in a man's relations with his fellows he is no more able unaided to extricate himself than is the sick man able to extricate himself from the clutches of disease. The more serious is the complication of a man's affairs with his fellows the more necessary is adequate legal advice. This holds true both in the trial of cases in the court room and in the adjustment of controversial affairs without resort to litigation. It can therefore hardly be too strongly insisted upon that in order to render adequate legal service to clients who are in trouble competent lawyers must be available. When a man's affairs are involved and he is in trouble with his fellows erroneous or blundering legal advice may lead not only to loss of the suit in litigation but may lead to the sacrifice of his property and his home, may lead to destitution and want on the part of his family, and may in criminal cases lead to the loss of personal liberty or even of life itself. When such interests of the large public of clients are put in jeopardy by the admission of incompetent and insufficiently trained lawyers to the practise of law it is an entirely inadequate answer to make to suggest that these young practitioners ought to be given the opportunity just like others of securing fees in the legal profession. Legal blunders are hard to avoid even for competent and well informed lawyers. The opportunity to untrained individuals to secure fees in the practise of law is an insig-

nificant consideration when weighed against the harm and the possibility of harm to the large public of clients which will be inflicted thru excess of blunders by incompetent and ill-trained practitioners. Those who have suffered from blundering and erroneous legal advice can readily sympathize with these statements.

As a summary it may therefore be said that the "poor boy" argument, the principal argument adduced against improving requirements for admission to the bar, is conclusively and effectively answered by at least three different independent considerations. In the first place, the poor boy argument is almost if not completely answered by the universal availability of educational opportunities and possibilities of working one's way thru in every case where the candidate himself has sufficient ability effectively to practise law. In other words the actual facts belie the statements that capable poor boys would be shut out from the practise of law by the proposed American Bar Association standards of admission. The "poor boy" argument is answered in the second place by the injustice that is involved in deluding the poor boy into a false assurance of the sufficiency of inadequate preparation and thus preventing his taking advantage of the opportunities for better training, which prevention in turn starts the poor boy in the wrong direction with largely increast chances for failure. The "poor boy" argument is answered in the third place by the consideration that the hardship on the public of clients in loss of property, family peace, homes, and even liberty or life itself due to incompetent and erroneous legal advice resulting from an untrained bar far outweigh any possible hardship that can fall upon individual candidates for admission to the bar thru the imposition of American Bar Association standards for admission under present educational conditions where educational opportunity is universal and any young man with ability to practise law can secure the appropriate training.

III. Is It Undemocratic?

It is sometimes suggested as an objection to raising bar admission requirements to conform to the American Bar Association standards, that such requirements would tend to create a legal aristocracy consisting of the well-to-do which it is said would be inconsistent

with the spirit of free institutions in a democratic country such as ours.[26]

1. MISCONCEPTIONS TO BE AVOIDED

Two misconceptions are responsible for the prevalence of this argument so far as the argument is made with sincerity. In the first place there is the misconception that nothing is involved beyond the question of closing the doors of opportunity to worthy young men. The second misconception is that doors of opportunity would be closed. Both assumptions are without substantial foundation.

The fixing of bar admission requirements involves not only the question whether certain individuals are to be favored with opportunities for lucrative law practise but also the question whether the people of the community are to be given efficient service by the legal profession when their affairs get involved and they find themselves in trouble. In other words the question is whether the interests of that large unvocalized public of clients in trouble are to be sacrificed for the sake of giving ill-prepared and unfit legal adventurers the opportunity of profitable legal practise at their expense. Put in another way the interests of the public in securing competent lawyers must not be lost from view in the consideration of the interest of the individual in opportunities for the practise of law. The discussion regarding the medical profession already adverted to is illustrative of this principle, which is equally applicable as already pointed

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[26] Suggestions of this sort are even made by A. Z. Reed in the Carnegie Foundation Bulletin No. 15 to which reference has already been made. That bulletin was prepared, however, before the American Bar Association standards were formulated, and its suggestions of this character are made in connection with discussions of what the writer conceives as the impossibility of maintaining a unitary bar. This conclusion on the part of Mr. Reed has been widely condemned, has apparently found little if any following, and has been deliberately and purposely rejected in the formulation of the American Bar Association standards. Furthermore, after the formulation of the American Bar Association standards Mr. Reed himself, despite his theories about a unitary bar, has in the article referred to in note (2), above, given his advocacy toward the adoption of the American Bar Association standards for admission to the bar.

The most aggressive presentation of this objection that the present writer has seen is found in bulletins issued by the National Association of Evening Law Schools. While the language of those bulletins seems needlessly vituperative, it goes on the misconception of fact, there broadly asserted, that it is well nigh impossible for an unskilled youth to work his way thru high school and college and that few accomplish it. Since the exclusion from educational opportunity which is there denounst in fact does not happen, as has already been amply demonstrated, the rest of the emphatic argument seems like knocking down a straw man set up for the purpose. Similar statements, tho much more moderate in tone, also appear in a little bulletin by Edw. T. Lee of the John Marshall Law School, one of the best evening law schools in Chicago. Not only is it plain that the asserted fact that it is practically impossible to work one's way thru is misconceived, but it seems fairly evident that a prime motive for the opposition to higher standards that is coming from the low standard commercial evening law schools is to safeguard their own financial receipts. As it appears to the present writer, the financial interest of those institutions, masquerading under the camouflage of unsubstantial arguments for individual opportunity, is insisted upon without regard to the interest of the candidates themselves in a fair opportunity for success in practise thru adequate training and without regard to the public interest in efficiency of the bar in its service to the community.

out to the legal profession. In the wider field of regulations of different sorts for the public safety it is equally to be noticed that all requirements involve some restriction to unregulated opportunity for the venturesome. Yet no one would suggest for instance in this day and age that lawyers should be admitted to practise without any qualifications or assurance whatever either as to character or ability. In the interest of public safety for the protection of the community as a whole it is regarded as not inconsistent with democracy to put some restriction on the exercise of certain callings and activities the abuse of which would be calculated to do public harm.

The second misconception, that the American Bar Association standards actually would exclude worthy members of the bar, is equally without substantial foundation. As already explained in connection with the discussion of possible hardship on the poor boy no such exclusion from the legal profession takes place on account of these educational requirements. The only exclusion that takes place is the exclusion of the candidates whose aptitudes are such that they cannot satisfactorily do the work required for successful practise of law. It is not true that the sons of poor people are excluded and that the requirements would confine admission to the bar as a practical matter to the sons of the well-to-do. Rather might it be said that if there is any one single class which will suffer the exclusion of its members from participation in the practise of law it is the class of the very rich whose sons, not inured to toil, find the exacting labor of legal preparation and subsequent practise of law too exacting to tempt them into the legal profession. In other words, if these requirements do not in fact exclude the poor boy from the legal profession as has been amply demonstrated above, then it is not true that these requirements are undemocratic in that they confine the practise of law to a single economic group. To put it in another way, that these requirements are not undemocratic is demonstrated by the fact that candidates under them can and do constantly find admission to practise limited only by the test of their own individual abilities, a test which it is necessary to impose in the interest of protection for the public of clients upon whom they propose to practise.

2. REQUIRED BY DEMOCRACY

Not only therefore are the misconceptions upon which the charge of lack of democracy is founded completely unwarranted in the light of actual facts but there is on the other side a very striking affirma-

tive reason why improved requirements for admission to the bar should be insisted upon in the interest of that very democracy which it is sought to adduce in opposition. Every member of the community, rich or poor, depends in large measure for his well being upon the orderly functioning of legal processes in order to preserve peace and order in the community, to maintain security of transactions and acquisitions, and to preserve to every individual equality of opportunity for working out his own material well-being. More might be said of interests the law ought to secure for the sake of the general welfare. Every individual in the community is subject to the inevitable possibility of trouble with his fellows in affairs where their interests conflict. Every individual in the community may become involved at some time or other in litigation. When a person is involved in litigation the assertion and the protection of his legal rights rests as a practical matter upon the attorney whom he is about to consult and who must guide the steps in his litigation. The rich and well-to-do who are accustomed to lawsuits soon find out by experience or reputation what lawyers are trustworthy in the handling of their affairs. Restrictions on the requirements for admission to the bar to protect such people from losses due to the action of incompetent attorneys are not necessary. The average individual in the community, however, who is not a habitual litigant, knows little or nothing about the actual capabilities for legal work of attorneys whom he must consult in the emergency which involves him in litigation. So far as the members of the bar are competent the occasional litigant is likely to be well served. If members of the bar are incompetent the occasional litigants, and that includes most clients, are as likely as not to happen upon a poor attorney to take charge of their affairs when they find themselves in trouble. In the interest of even-handed democracy, therefore, the quality of the legal profession ought to be maintained so far as regulations can practically maintain it at such a uniformly high degree of competence that capable lawyers shall be available for rich and poor alike, and that the state's certificate of admission to practise shall be at least a reasonably safe criterion that the lawyer who possesses it is sufficiently competent to be entrusted with the affairs of clients.

This point is strongly insisted upon for instance by Mr. Joseph F. Dickens of Henrietta, Texas, in the following striking language:[27]

"A preacher can make a mistake. He can preach a false

[27] Proceedings of the Section on Legal Education of the American Bar Association, quoted in 4 American Law School Review, p. 691 (November 1921).

doctrine. A man can go to some other preacher and perhaps repent. I am not sufficiently well versed in the various religious creeds to know what ones you can back slide in and then get back.

"I say to you that when a lawyer loses your case you are out of luck for once and all and if you don't know what your business is you are blown up. If a man takes his client's money he ought to know what he is doing. He ought to know how to take care of a case. I say to you that neither a day school nor a night school for a few months can do it. You have to have a real education."

The same point is tersely put by Clarence N. Goodwin of Chicago, chairman of the Conference of Bar Association Delegates in the following paragraphs:[28]

"....It occurred to me then that this same principle of human equality must be a decisive factor in all our deliberations. We affirm that we believe in equality before the law. But how can equality before the law be possible when the rich and powerful are represented in court by highly educated, thoroly trained and most competent members of the profession, while a large part of the poor and ignorant who frequently find themselves in court opposed to the more fortunate, are so often represented by ignorant, untrained and incompetent men who have, thru the laxity of our methods, been commissioned by the state with authority to counsel and advise and represent them?

"The shrewd and powerful men and interests of large means are able to know who are competent and who are not, but how is the poor man, the ignorant man, to make any just estimate of who is capable of properly advising and representing him?

"During my years as a trial judge I was frequently distrest by the fact that one side or the other in the case before me was so incompetently represented by counsel or represented by such ignorant counsel that, owing to the learning and skill of the attorneys on the other side, it seemed impossible to get the case properly before the court, or keep error out of the record.

"During my years in the Appellate Court, we found ourselves constantly confronted with records which showed such palpable and unmistakable errors as to make it necessary to re-

[28] Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, pp. 11-12.

verse the case, altho it obviously had merit, and altho it was almost a moral certainty that had the errors been eliminated the verdict and judgment would have been the same.

"These miscarriages of justice, due to ignorance and incompetence of counsel, are largely beyond the power of the judge to control, or of rules of practise to remedy. It is to be remembered, however, that the men representing these unfortunate litigants were licenst by the state to practise law.

"It seems little less than a crime for the state to certify to the competency, to the learning and to the ability of a man to represent his fellow citizens in court who is not learned nor able nor competent to represent or advise anybody in any legal matter."

It will therefore be seen so far as the objection is concerned that improving requirements for admission to the bar would be undemocratic, that the objection itself rests upon a misconception overlooking the public interest in having a competent bar to serve the needs of the public of clients when involved in trouble and upon a misconception that the requirements actually would exclude candidates simply on the basis of poverty. Both misconceptions, as has been seen, are without foundation. Furthermore, so far from being undemocratic is the improvement of requirements for admission to the bar that such improvement itself is called for in the most emphatic manner in the interest of democracy in order that competent lawyers may be available at first hand to rich and poor alike in the emergencies of trouble which precipitate them into litigation or controversy requiring legal advice to untangle.

IV. Inertia

The most serious practical objection to improving requirements for admission to the bar, in the opinion of the present writer, is the dead weight of inertia. To let things run along in the same old way is habitually easy. To make changes in the establisht order of things for the sake of manifestly needed improvement runs against the settled mental habits attacht to that to which we have become accustomed, and encounters also the intellectual hostility to the unknown raising fears of working new evils not sufficiently foreseen.

It should be remembered, however, that every step of progress encounters and must overcome the element of inertia and that when manifest evils appear calling loudly for a remedy it is no answer to say that " as things have been so let them continue to be." As ap-

plied to the problem of improving requirements for admission to the bar, the rational case has already been made to overcome the element of inertia that may be naturally encountered. On the one hand the bulk and the difficulty of the law has enormously increast in the last fifty years while effective office training has completely disappeared. On the other hand educational opportunities, general and professional, have become universally available to everyone with ability thruout this country. It is admitted on all hands that more thoro training for the bar would greatly improve its quality. It is also demonstrated that the educational opportunities to secure the requisite training for admission to the bar which were much more limited forty years ago have now become universally available and that in consequence no appreciable hardship would in fact be done by the change. To put it in a sentence, the need for more thoro educational training for the bar is amply demonstrated in the interest of competent legal service to the general public of clients while the asserted hardship on the individual from the closing of opportunities of practise in consequence is non-existent. The rational case in favor of improving requirements for admission to the bar is therefore abundantly made out, and merely the instinctive habit of inertia remains against it. The objection of inertia is well stated and answered by Mr. Elihu Root in his final statement before the Conference of Bar Association Delegates as follows:[29]

> "....Another class of objection was illustrated this forenoon by my friend, the former senator from Colorado, Mr. Thomas, for whom I have had for 40 years or more, since we first met in the Supreme Court of the United States, not only great admiration, but warm friendship. Now my good friend was responding not to a study of this subject, but responding to the natural reaction of a man who rather dislikes to have the old traditions of his life interfered with by somebody else."

His answer to it is equally effective:[30]

> "....All that the opposition here comes to is simply to stop, to stop! to do nothing! stop the American Bar Association, disapprove them, tell them they should do nothing! How much better, instead of beating over the prejudices and memories of a past that is gone, it is to take dear old Edward Everett Hale's maxim, 'Look forward, not back; look upward, not down, and lend a hand'."

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[29] Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, p. 172.
[30] Ibid., p. 173.

D. ALTERNATIVES ALREADY REJECTED

The opponents of any substantial reform who find it impossible to prevent the adoption of such reform by a reasoned consideration of its merits or defects frequently have recourse to alternative proposals for which something may also be said in order to sidetrack the reform movement which is offered and in that indirect way to block it if possible. It would have been strange had not the tactics of alternative proposals been resorted to by those who have opposed the American Bar Association standards for admission to the bar. It is not the purpose of this paper to discuss at length the alternative proposals that were brought forward at one time or another in the course of the deliberations on the American Bar Association standards when they were proposed for adoption and endorsement. It suffices to set out what the alternative proposals were and to call attention to the fact that they have been proposed, considered, and rejected, in order that if alternative proposals of the same character are hereafter attempted they may be recognized for what they actually are as movements which in fact tend only to embarrass the consideration of the American Bar Association standards and imperil if possible their legal adoption as the standards for admission to the bar required in North Dakota.

I. Postponing Action

One of the alternatives was a proposal to postpone action on the matter for another year in order that further consideration might be given, especially on the basis of the Carnegie Foundation Report. The answer to this proposal was that the American Bar Association standards had been formulated by the Special Committee after extended and deliberate consideration of the Carnegie Foundation Report and with the deliberate announcement that some of the conclusions of the writer of that report were erroneous. The American Bar Association at its meeting in Cincinnati, in 1921, therefore emphatically rejected the proposal to postpone and proceeded to action.[21]

II. Individual State Bar Association Standards

A second alternative proposal that has been made is to give the bar association of each state power to prescribe requirements for admission to the bar in that state. While something may be said as an original question for this proposal it is unlikely in this form to meet with popular approval since it commits to the legal profession complete power to control future admissions. It is likely to be objec-

[21] Report of the American Bar Association for 1921, pp. 37-47.

tionable also on constitutional grounds on account of the proposed delegation of legislative or judicial power as the case may be. Be these considerations as they may, this alternative proposal was presented to the Conference of Bar Association Delegates and was emphatically rejected by them since it would only tend to embarrass the adoption of the proposed American Bar Association standards.[33]

III. The Elusive "Equivalent"

A third alternative that has been suggested is to accept three years of law school work "or its equivalent" as satisfying the proper requirements for legal education. If this were adopted obviously office preparation would still be a possible alternative mode of training officially recognized by the law of the state altho in practise its usefulness for that purpose has disappeared and its official availability for that purpose serves only to mislead the uninformed student. A still more dangerous alternative than office training inheres in this suggestion of the "equivalent" however. Under the guise of this indeterminate "equivalent" the law school standard fixt by the American Bar Association would disappear and the private ventures of commercial law schools irrespective of the quality of their work would be left to ply their trade for pecuniary profit thru extensive advertising at the expense of ill-informed and deluded young candidates who would thus be diverted from securing adequate legal preparation to the ultimate injury both of themselves and of the communities in which they later seek to practise. The proposal to accept three years of law school work "or its equivalent" was accordingly emphatically rejected by the Conference of Bar Association Delegates.[33]

IV. High School Basis

A fourth alternative proposal that has been advanst is to accept instead of two years of college education a diploma from a recognized high school or from an approved preparatory school. This alternative proposal is the frankest expression of deliberate rejection of the American Bar Association standards in that it directly proposes to substitute a lower educational standard and thus progress no further. This proposal was accordingly rejected in the Section on Legal Education of the American Bar Association and the American Bar Association standards adopted for recommendation in its stead.[34]

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[33] Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, pp. 170-174.

[33] Ibid., pp. 168, 174.

[34] Proceedings of the Section on Legal Education of the American Bar Association, quoted in 4 American Law School Review, pp. 690, 692 (November 1921).

V. Specific Subject Requirements

A fifth alternative proposal that was advanst in the course of the deliberations on the American Bar Association standards is the proposal to accept instead of two years of college education a knowledge of English, English and American History, Political and Social Science, and Ethics. While something may be said as an original question in favor of standardizing the college education required to include some of all of these subjects it was thought entirely out of the question to accept any such indeterminate suggestion as a substitute for the requirement of college education. When this proposal was brought forward, therefore, it was not even seconded in the section on Legal Education of the American Bar Association and therefore failed of further consideration.[88]

E. THE PROPOSED STATUTE RECOMMENDED

To carry into effect the American Bar Association standards for admission to the practise of law in North Dakota the following draft statute is offered as approved by the North Dakota State Bar Association.

I. The Proposed Statute

A Proposed New Section 790. QUALIFICATION OF APPLICANTS.

"After August 1, 1926, applicants for admission to practise as attorneys and counselors at law must have the following qualifications:—

1. They must be residents of this state.
2. They must be at least twenty-one years of age.
3. They must be of good moral character.
4. They must have completed satisfactorily at least two years of work of college grade either in the University of North Dakota or in some other college or university of equivalent standing, or partly in one and partly in some other or others of such colleges or universities.
5. They must have actually and in good faith pursued a regular course of study of the law for at least three full college years of not less than thirty-five weeks each either in the University of North Dakota Law School or in some other Law School of equivalent standing, or partly in one and partly in some other or others of such law schools, and must have graduated from such law school. If they have devoted only a part of their working time to their study of law they must have pursued a longer course of study equivalent in the number of working hours, and must have graduated."

[88] Ibid., p. 692.

II. Provisions Remaining Unchanged

Comparison with the existing Statute as appearing in the Compiled Laws of North Dakota for 1913, section 790 et seq. discloses that the statute herewith proposed works no change in the following respects.

1. Residence.
2. Age.
3. Moral character, except as indirectly affected by better educational training.
4. Period of dogmatic study of law, three college years of not less than thirty-five weeks each.
5. Reality and good faith in application to the work of legal training for the period required.
6. Availability of opportunities for students to transfer from one school to another while satisfying the time required for legal study.
7. Admission of attorneys from other states on certificate of at least three years of practise in the courts of such states.

As the features here enumerated are not involved in the American Bar Association standards, except as noted, it has been thought best to retain the wording of the present statute on these features in order to involve no needless statutory changes in introducing the American Bar Association standards for admission to practise.

III. Provisions Changed by the Proposed Statute

In order that the scope of change effected by the proposed statute may be seen at a glance it has been thought desirable to enumerate seriatim the points of change involved.

1. Two years of college work

Two years of college work are required where no general educational qualifications were formerly involved. The necessity of the requirement of thoro general education has already been sufficiently discust in earlier parts of this paper not to require repetition at this point.

2. Law school preparation

Law school preparation is required of all candidates for admission to the bar and the alternative of admission by the route of office training ceases. This feature also has already been sufficiently explained to need no further repetition.

IV. Standards Fixt for the Work Required

The requirement of college and law school training would be

nugatory without the adoption of practically applicable standards by which to determine whether the training that is offered is a reality. The American Bar Association accordingly formulated some general standards. The statute here proposed embodies the local application of those standards and in the interest of certainty in administration makes them specifically measurable with reference to the familiar work of the North Dakota state educational institutions. A few words on each feature of the standards of work thus fixt seem appropriate.

1. QUALITY OF WORK DONE

Under the old statute which is now in force, three years spent in a law school or spent in an office satisfies the statutory requirement of the period of study irrespective of the amount of achievement or quality of work actually done. While office study remains an alternative recognized by statute as sufficient legal preparation, this indefiniteness as to actual achievement is inevitable since no standards are available on which to judge the quality of such office work. Active practitioners in fact do not teach students registered in their offices and their certificates can as a practical matter amount simply to a statement that time has been spent browsing around in the office. Even those certificates themselves have been given with irresponsible leniency to young men registered in law offices as a matter of form while actually in fact carrying on independent occupations of their own and not in good faith complying with the statutory requirement of study of law in the office of a practitioner.

With the advent of the requirement of educational preparation in a definite institution of learning all this necessary vagueness and uncertainty as to the achievement actually accomplisht disappears. It is familiar knowledge to every one connected with educational institutions and schools of all types and it is familiar knowledge to parents who send children to schools that in a regularly conducted educational course the progress of the pupil is as a practical matter measured in definite standards of some sort and the result indicated in marks showing with substantial accuracy the student's proficiency. Every one familiar with the public school system recognizes the difference between satisfactory work entitling the pupil to promotion and unsatisfactory work indicative of lack of achievement. The same holds true for college education and for law school training. The substantial difference between satisfactory and unsatisfactory work is generally readily recognizable on standards familiar to the educators

in charge and regularly in use for everyone. Consequently the ordinary standards of achievement in such preparation can readily be applied to candidates pursuing the educational preparation for admission to the bar and nothing but satisfactory work as required by the educational standards developt from long experience need be certified as complying with the statutory requirements. In other words when definite educational requirements are imposed by the statute, the ordinary standards of satisfactory work applied to such educational preparation can be invoked as a matter of course and the statute can achieve the reality of actual preparation which it seeks to achieve by imposing the educational qualification. Such reality of actual achievement was difficult to realize under the office training system since no standards were accessible on which to measure achievement in office training and as a practical matter no measure of achievement of any kind w[illegible] fact applied.

2. STANDARD FOR THE COLLEGE OR LAW SCHOOL OFFERED

In order to facilitate the administration of the statute as applied to candidates for admission to the bar it is necessary to specify the character of the college in which the pre-legal work is done by some known and identifiable standard in order to prevent the whittling away of the provisions themselves by offerings of mere high school work masquerading under the higher-sounding names of academies and so-called small colleges. Accordingly in the proposed statute the standard for college education required is fixt as that of the University of North Dakota, the college maintained by the state itself, and other colleges are required to have equivalent standing. Whether a particular college from which pre-legal work may be offered has such equivalent standing can in practise readily be determined with reference to its rating at the University since among the educational institutions such comparisons are constantly made in the course of the ordinary routine of transferring credits when a student moves from one institution to another.

The same consideration applies when the standard of law school work is to be considered. The law school of the University of North Dakota already complies with the American Bar Association standards of quality and furnishes a ready local basis for comparison by which to determine whether any given law school from which credits are offered satisfactorily fulfills the general requirements involved. Furthermore, the University Law School is itself a standard law school, a member of the Association of American

Law Schools composed of the best law schools in the country. Unless definite law school standards are fixt in the statute nothing would prevent the whittling away of the substantial benefit of the first-class law school training requirement thru the formation of low-standard and ill-equipt commercial law schools organized for the occasion not to give adequate legal education but organized to collect fees from students resorting to them thru vigorous advertising irrespective of the quality of instruction actually offered.

It might be mentioned in passing that the policy of fixing the statutory standard for institutions generally with reference to a recognized and establisht institution within the state is already familiar in that the standard fixt for medical education in the state of North Dakota is gauged by reference to the School of Medicine at the State University.[26]

V. Time When the Proposed Statute Should Take Effect

Since under the statutory requirements which are now in force a three-year course of preparation in law school or office is required and since there are likely to be individuals now in law schools or offices who made their arrangements relying on the terms of the statute as now existing, it seems unfair to such individuals to interfere with their individual plans thru the enactment of new legislation having as to them substantially retroactive effect. It is therefore proposed that the new legislation should take effect on August 1, 1926, in order to permit those whose plans have already been made in reliance on the present statute to complete their preparation accordingly. In the meantime those whose plans for the future have not been formulated and whose definite preparation has not yet begun can be informed thru the adoption of the new legislation as to what are the new requirements. These candidates will have the time and the opportunity to make their plans and secure their preparation accordingly. In other words, to permit the necessary readjustment in the educational plans of prospective candidates for the bar the operation of the new statute would be postponed for a definite period, but its promulgation should not be delayed since the new requirements ought to go into effect at the earliest moment consistent with balanced justice to the different parties affected. Unless the statute is enacted by the legislature the period of readjustment will never be reacht and the problem of providing for such readjustment will always be present to prevent putting the improved requirements into effect.

[26] Compiled Laws of North Dakota, sec. 466.

F. SUMMARY

The briefest comprehensive summary of the arguments here made for improved educational requirements for admission to the bar is a glance over the outline of contents appearing herewith.

The briefest cursory summary of the arguments here made for improved educational requirements for admission to the bar is that those who favor such improved requirements insist on their importance to the public of clients, in increasing the efficiency of the bar, while those who oppose such improved requirements insist on the supposed injustice of restricting individual opportunity to practise law. On matters of this sort, involving weighing or balancing of opposing considerations it is not strange that the first instinctive responses of various individuals should differ. Painstaking investigation, however, as already elaborately set out in the foregoing pages, can hardly fail to justify the conclusion that increast efficiency of the bar in the interest of better administration of justice is greatly needed while the supposed restriction on individual opportunity to practise law is practically negligible. It is therefore submitted that the improved requirements for admission to the bar should be adopted, both in the interest of the candidates themselves who will thereby be assured of an even chance for success at the bar, and in the interest of the public in general, whether as litigating clients or as members of the community, whose well-being so largely depends on efficient administration of justice.